



Issue Date: 13 July 2005

CASE NO.: 2005-ERA-13

IN THE MATTER OF

STEVEN J. CLARK,
Complainant

vs.

SOUTH TEXAS NUCLEAR OPERATING COMPANY,
Respondent

DECISION AND ORDER APPROVING SETTLEMENT

This matter arises under the employee protection provisions of the Energy Reorganization Act¹ (the Act) and the regulations promulgated pursuant thereto.² It involves a claim of unlawful discrimination made by Steven J. Clark (Complainant) against South Texas Nuclear Operating Company (Respondent).

Complainant filed his original complaint with OSHA in June 2004. He alleged that Respondent had placed him on long term disability in violation of a November 2000 settlement of a previous complaint under the Act and in further retaliation for the protected activity that was the subject of that original complaint. OSHA conducted an investigation, during which Respondent made an offer to make Complainant whole. He declined the offer, against the advice of his counsel.

Complainant then became *pro se* and OSHA dismissed the complaint. Complainant demanded a formal hearing. The hearing was set and then continued in order to allow the parties to mediate with a settlement judge.

The parties now have entered into a settlement agreement. In it:

I. Complainant agrees:

That the sole basis for the current complaint is his belief that Respondent breached the earlier settlement and that Respondent has not otherwise retaliated or discriminated against him under the Act.

¹ 42 U.S.C. 5851 *et seq.* (2003)

² 29 C.F.R. Part 24 (2004)

To fully release Respondent from any obligations under the 2000 settlement and for any breaches of that settlement.³

To fully release Respondent for any damages under the Act for any conduct occurring prior to the date of settlement.

To fully release Respondent from any and all claims arising out of facts involved in the previous complaint, prior to the date of settlement, with the exception of the Americans with Disabilities Act or disability discrimination provisions of the Texas Labor Code.

That if he recovers from a court of competent jurisdiction under the Americans with Disabilities Act or disability discrimination provisions of the Texas Labor Code, any damages awarded will be offset by the settlement paid herein.

That in order to contest the validity of the agreement he must first return to Respondent all amounts paid hereunder.

That he is over 18 years of age; the agreement is fair, reasonable, adequate, and consistent with public policy; there are no other agreements or promises; the agreement is not obtained through fraud, trickery, mistake or duress; and he enters the agreement freely and voluntarily, having had the opportunity to seek legal and tax advice.

That he will hold Respondent harmless for all claims for taxes on the amount paid herein.

II. Respondent agrees to pay Complainant \$15,000.00 within 14 days of final approval.

III. The parties agree that:

Nothing in the agreement shall be construed as an admission by Respondent of any wrongdoing, liability, or culpability.

No term or provision of the agreement prohibits, restricts, or prevents Complainant from reporting any nuclear safety concerns or engaging in protected activity under the Act.

Any action or litigation arising out of an alleged violation or breach of the agreement shall be controlled by the laws of Texas and federal law, and the prevailing party in such action is entitled to recover costs and attorney's fees.

³ The agreement recognizes that it does not restrict the ability of the Department of Labor to bring an enforcement action.

Each party bears its own costs and tax consequences as to litigation leading to and the execution of this settlement.

The agreement may be amended only in writing.

Although Complainant is now *pro se*, he was previously represented in the matter by counsel, who recommended he accept an earlier settlement offer. Complainant has therefore had the benefit of legal advice.

This settlement does contain matters which are beyond the scope of the Act and this review. Whether or not the release from liability for other legal causes of action will be honored by a court with competent jurisdiction is not an issue for me to address. Similarly, the question of whether an agreement that, in the event the settlement is the subject of future litigation, the prevailing party can recover costs and fees to an extent beyond that provided for in the Act and implementing regulations is enforceable is not within the scope of this review. Whether a court approving a judgment under a disability statute would enforce the offset agree to herein is likewise beyond the scope of the Act. Finally, the agreement that Complainant must return all monies paid herein before contesting the validity of the agreement will not operate to prevent the filing of a new claim under the Act, although it may be found enforceable should the matter somehow arise in a contractual or tort setting.

However, the fundamental aspects of the agreement are the release of Complainant's rights under the Act in exchange for \$15,000.00. For the purposes the Act, the settlement appears fair, reasonable, and not contrary to public policy.

Based on the foregoing, and in accordance with the parties' agreement, it is **ORDERED** that:

1. The settlement agreement is **APPROVED**.
2. The ERA complaint in this matter is **DISMISSED** with prejudice.

So ORDERED.

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PATRICK M. ROSENOW
Administrative Law Judge

NOTICE: This Decision and Order Approving Settlement will automatically become the final order of the Secretary unless, pursuant to 29 C.F.R. § 24.8, a petition for review is timely filed with the Administrative Review Board, United States Department of Labor, Room S-4309, Frances Perkins Building, 200 Constitution Avenue, NW, Washington, DC 20210. Such a petition for review must be received by the Administrative Review Board within ten business days of the date of this Decision and Order Approving Settlement, and shall be served on all parties and on the Chief Administrative Law Judge. *See* 29 C.F.R. §§ 24.7(d) and 24.8.